LIM MONG HONG v. REX.

[App. Crim. Juris. (Murray-Aynsley, J.) April 30, 1947]

Criminal Procedure Code, Sections 173 and 176 —Duplicity of Charges.

In this case the accused was convicted on the following charge "That he, on or about the 26th day of November 1946 at about 3 p.m. at Upper Serangoon Road, 5th Milestone, Singapore did cause hurt to one Tan Choon Lim by doing an act to wit driving taxi S.1403 so negligently or rashly as to endanger human life or the personal safety of others and thereby committed an offence punishable under Section 337 of the Penal Code Chapter 20." He appealed against this conviction.

Held, that the charge was bad for duplicity.

Case referred to :—

(1) *Yap Liow Swee v. Public Prosecutor* (1937) F.M.S.L.R. 71; (1937) 6 M.L.J. 225.

MAGISTRATE'S APPEAL.

C. F. J. Ess for the Appellant.

C. H. Butterfield for the Respondent.

Murray-Aynsley, C. J. :—In this case the appellant was charged under section 337 Penal Code. The charge was as follows :—

> That he, on or about the 26th day of November 1946, at about 3 p.m. at Upper Serangoon Road, 5th Mile Stone, Singapore, did cause hurt to one Tan Choon Lim by doing an act to wit driving taxi S.1403 so negligently or rashly as to endanger human life or the personal safety of others and thereby committed an offence punishable under section 337 of the Penal Code Chapter 20.

He was convicted and sentenced to 3 months r.i.

In view of the decision in the case of *Yap Liow Swee*[1] the learned Crown Counsel did not contend that the charge was not bad for duplicity. This was a decision of the full Court of the F.M.S. and I suppose ought to be followed. But for this case I should have held that the English cases on the subject were not applicable in view of s. 176 of the Criminal Procedure Code and the defect, if any, was one of form.

Appeal Allowed.

TAN HOAN KIE v. TAN YEW EE AND FIVE OTHERS.

[Orig. Civil Juris. (Brown, J.) July 23, 1947]

Trustees Ordinance, Section 27 (4)—Statutory declaration by trustee, executing a power of attorney that he intends to remain out of the Colony for a period exceeding fourteen days—When time is of the essence of contract of sale of land—Repudiation of contract of sale of land—action for declaration and for damages—whether summary procedure under Section 4 of Conveyancing and Law of Property Ordinance should have made use of.

In this case the plaintiff at an auction sale held on the 2nd October, 1946 purchased from the defendants, who were trustees of the Chinese Gospel Hall, selling under an order of Court, the piece of land the subject of the action for $23,500/- and paid 25% of the purchase price as deposit to the auctioneers as stakeholders. By a condition of the Conditions of Sale the purchase was to be completed on the 2nd day of November, 1946 or at some later date to be given by the vendor's Solicitors in case of delay in having the assignment executed by the absent vendors or their attorneys. On the 5th of November, 1946 no draft assignment having been sent by the plaintiff's Solicitors for approval the defendants' Solicitors wrote to them to give notice inter alia that "unless the purchase of the property by your client is completed by the 16th instant our clients will treat the deposit as forfeited". On the following day November 6th the plaintiff's Solicitor wrote enclosing the draft assignment and asking that in the case of those trustees who were not in the Colony, the powers of attorney and the Statutory Declarations signed by them as donors should be produced for inspection. The defendants' Solicitors took the view that no Statutory Declaration was necessary as the trustees had been out of the Colony for some considerable time and no Statutory Declarations were produced on the 16th of November when the chief clerk of the plaintiff's Solicitor attended at the office of the defendants' Solicitors with a cheque for the purchase price and asked for them. The chief clerk thereupon said that his instructions were not to complete without them. Thereupon the Solicitor said "Then we can't complete". On the same day the plaintiff's Solicitor wrote to the Defendants' Solicitor that the plaintiff treated the contract as at an end. The plaintiff subsequently brought an action against the defendants.

Held, (1) that in the absence of the Statutory Declaration by the Trustee required by Section 27 (4) of the Trustees Ordinance the law does not give him power to delegate his trust during his absence abroad for a period exceeding fourteen days and that in the absence of the Statutory Declarations the defendants were unable to complete on the completion date, November 16th.

(2) that in this case by their letter of November 5th 1946, the defendants had made the completion date of November 16th 1946 the essence of the contract;

(3) that the defendants' inability to complete on the 16th November 1946 amounted to a repudiation of the contract and that the plaintiff had accepted the repudiation by his letter of the same date;

(4) that as there was in this case more than the short point of whether the Statutory Declaration were required under Section 27 (4) of the Trustees Ordinance and having regard to all the circumstances of the case, the plaintiff's Solicitors were justified in bringing the action instead of making use of the summary procedure under Section 4 of the Conveyancing and Law of Property Ordinance which is intended only for the purpose of deciding short points of law and construction.

Cases referred to :—

(1) *Hatten v. Russel* 38 Ch. 334.

(2) *Stickney v. Keeble* (1915) A.C. 416.